

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST  
FOR REVIEW BY:

**LARRY BOYD**

Petitioner.

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CHARGE NO.: 2009SF3700  
EEOC NO.: 21BA92106  
ALS NO.: 10-0141

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Larry Boyd's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge 2009SF3700; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following:

1. On May 2, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Carle Foundation Hospital ("Employer") harassed him because of his race, Black (Count A), and that the Employer discharged him because of his race (Count B) and in retaliation for having opposed unlawful discrimination (Count C), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("the Act"). On February 5, 2010, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. On February 25, 2010, the Petitioner filed this timely Request.
2. The Petitioner was an Environmental Services Team Lead worker. His supervisor in August 2008 was a White male.
3. On August 1, 2008, the supervisor gave the Petitioner a First Written Warning.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. In August 2008 the Petitioner's supervisor failed to give the Petitioner a message from his wife.
5. On August 10, 2008, the Petitioner wrote a letter to the Employer's Human Resources Department. In the letter, the Petitioner complained that his supervisor was harassing him and attempting to discharge him. The Petitioner also complained that a member of the Employer's Emergency Department staff was harassing him.
6. On December 3, 2008, the Petitioner's supervisor gave the Petitioner a Final Written Counseling for excessive absenteeism.
7. On February 13, 2009, the Petitioner took his break. Although employees were allowed 15 minute breaks, the Petitioner allegedly took a 55 minute break.
8. On February 20, 2009, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner because the Petitioner took a 55 minute break on February 13<sup>th</sup> and because the Petitioner had accumulated disciplinary warnings for various other infractions.
9. In his charge, the Petitioner alleged that from August 10, 2008 through February 20, 2009, he was harassed because of his race. The Petitioner further alleged he was discharged on February 20<sup>th</sup> because of his race and in retaliation for having opposed unlawful discrimination.
10. In his Request, the Petitioner argues that some of the statements attributed to him in the Respondent's investigation report were fabricated. Further, the Petitioner contends his supervisor routinely harassed Black employees. The Petitioner states his supervisor always wanted to discuss Rush Limbaugh and engage the Petitioner in political discussions. The Petitioner's supervisor would also make negative comments about President Barack Obama on a daily basis. Regarding the Employer's contention that the Petitioner took an extended break on February 13<sup>th</sup>, the Petitioner states he felt physically ill and was light headed that day. The Petitioner states that he sat down until the pain subsided. The Petitioner contends he does not know how long he sat down, but as soon as the pain subsided, he continued with his duties.
11. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because it found no substantial evidence the Employer was motivated by either racial animus or retaliation.

### **Conclusion**

The Commission concludes the Respondent properly dismissed all Counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

As to Count A, the Commission concludes there is no substantial evidence the Employer harassed the Petitioner because of his race. Assuming as true that the Petitioner's supervisor subjected the Petitioner to the conduct alleged—that his supervisor failed to give the Petitioner the telephone message from his wife; and that his supervisor listened to Rush Limbaugh and criticized President Obama during work hours; and that his supervisor tried to engage the Petitioner in political discussions—there is no substantial evidence this conduct was motivated by the Petitioner's race. The Petitioner's speculation does not constitute substantial evidence of a discriminatory motive. See Willis v. IDHR, 307 Ill.App.3d 317, 718 N.E.2d 240 (4<sup>th</sup> Dist. 1999).

As to Counts B and C, the Commission finds no substantial evidence the Petitioner was discharged either because of his race or in retaliation for having complained about racial harassment. Although the Petitioner does not admit he took a 55-minute break, he acknowledged he did not know how long he sat down on February 13, 2009, before returning to work. At this stage of the proceedings, the Commission does not attempt to resolve this factual dispute. Rather, the Commission looks to see if there is some evidence from which a reasonable mind could conclude the Employer was motivated by animus rather than by its reasonable belief that the Petitioner had violated its rules. See Carlin v. Edsal Manufacturing Co., Charge No. 1992CN3428 ALA No. 7321 (May 6, 1996), *citing to*, Homes and Board of County Commissioners, Morgan County, 26 Ill. HRC Rep. 63 (1986).

In this case, other than the Petitioner's belief that the Employer was discriminating and retaliating against him, there has been no evidence presented from which a reasonable mind could conclude the Employer discharged the Petitioner on February 20, 2009, either because of the Petitioner's race or because the Petitioner had opposed unlawful discrimination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and

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Carle Foundation Hospital, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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**HUMAN RIGHTS COMMISSION**

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**Entered this 13<sup>th</sup> day of October 2010.**

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box